

TESTIMONY SUBMITTED

BY

AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

And

COALITION FOR AUTO REPAIR EQUALITY

REGARDING

SMALL BUSINESS COMPETITION POLICY: ARE MARKETS OPEN FOR
ENTREPRENEURS

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE

September 25, 2008

The Automotive Aftermarket Industry Association (AAIA) and Coalition for Auto Repair Equality (CARE) are pleased to submit the following testimony for your September 25th hearing entitled Small Business Competition Policy: Are Markets Open for Entrepreneurs.

AAIA is a Bethesda, Md.-based association whose more than 23,000 members and affiliates manufacture, distribute and sell motor vehicle parts, accessories, service, tool, equipment, materials and supplies. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets.

CARE is a national, nonprofit organization representing the automotive aftermarket. CARE's underlying role is to ensure that consumers nationwide receive safe, affordable and convenient vehicle repair and service. CARE's membership is comprised of approximately 20,058 vehicle repair facilities and 14,762 auto supply and accessory retail locations nationwide.

The aftermarket represents everything that happens to a car once it leaves the new car showroom. While not as well known as the vehicle manufacturers, our industry had over \$285 billion in sales in 2007, contributed 2.2 percent to the nation's gross domestic product annually and employs nearly 5 million people. However, more importantly, our industry helps keep America on the road by providing car owners with affordable, effective and convenient vehicle repair. Not only are our services important so that Americans can get to work or take their kids to soccer games; but we also help keep our highway's safe by maintaining a vehicle's critical safety systems and reduce global warming emissions by ensuring that today's complex engines are operating at their peak efficiency.

Since the invention of the vehicle, the U.S. has had the most competitive vehicle aftermarket in the world. Americans currently have a wide array of choices in vehicle repair, whether it's going back to the location where they purchased the vehicle or to thousands of independent vehicle repair shops that are in every community in the Nation. This competition has kept car owners and not the vehicle manufacturer in the driver's seat when it comes to making choices regarding vehicle repair destinations.

Thus far, car owners have overwhelmingly chosen the independent service industry once their warranty has expired. Most surveys indicate that 70 to 75 percent of car owners prefer independent service facilities over new car dealers based on price, trust and convenience. In their May of 2008 issue, Consumer Reports reported that "independent shops generate a higher level of overall satisfaction than dealerships." The publication cited a nationwide survey that found 71 percent of respondents who took their vehicle only to independent shops for repair service were very satisfied with the experience. This compared with just 53 percent who were very satisfied using new car dealers for repairs. I have included the article as an attachment to our testimony.

While we are proud of our service to the American motoring public, we are extremely concerned that the dynamics of the market are changing and that our independent shops are being placed at a competitive disadvantage. This change has nothing to do with the efforts that our independents are investing in servicing the public, but rather attempts by car companies to use technology to obtain a competitive advantage for their dealer network, an advantage that dealers have been unable to gain through customer service or price. Left unchecked, we will soon see the car companies controlling the decision as to where a car is repaired and not the person who purchased the vehicle, further squeezing consumers.

The U.S. Congress foresaw the role technology would play in the repair market back in the late eighties when the Clean Air Act was being debated. The Act required that car companies equip their vehicles with on-board diagnostic (OBD) systems that would monitor the emissions system and alert the car owner to an emissions defect. While it was anticipated that these OBD systems would ensure that a vehicle would pollute less while they were on the road, then Senator Albert Gore (D-TN) and Rep. Henry Waxman (D-CA) were concerned that car companies would keep access to this technology as proprietary, using it to prevent independent service facilities from competing for the repair of late model vehicles. Therefore, provisions were added by Senator Gore and Rep. Waxman into the 1990 Clean Air Act Amendments that would require that the on-board computers be accessible without the need for proprietary tools and that any information needed to repair the emissions system be made available to the independent aftermarket. While this provision did permit car companies to retain their trade secrets, the legislation specified that no information may be withheld if that information had been provided directly or indirectly to the new car dealer.

The regulations promulgated by the U.S. Environmental Protection Agency as a result of the Clean Air Act service information provisions have required the development by car companies of web sites that contain valuable emissions related service information. In addition, the law has required that the car companies make emissions related diagnostic tools available to independents that are critical to the proper repair of late model computer controlled vehicles. However, the gains made by the Act are tempered in the last several years by the fact that the computers, now being installed on vehicles, go well beyond emissions--monitoring and controlling nearly every function of the vehicle from safety to entertainment. Further, new technologies are coming quickly down the pike that could provide vehicle manufacturers with even more of a competitive advantage when it comes to repairing a customer's vehicle.

Of particular concern for the future is the advent of telematics. Utilizing wireless technology, telematics will permit a vehicle to transmit information from OBD systems to the car company while the vehicle is moving down the road. Information could include fault codes, vehicle mileage and location of the car. Armed with this data, new car dealers will be able to inform the car owner of the need for a particular service such as a brake repair, and set up an appointment to have that service undertaken at their service bay. The dealer further would have advance knowledge of the vehicle fault, the ability to diagnose that fault and have the tools, parts and information ready to go—

before the vehicle has even arrived at the dealer facility. Not only will telematics give the dealer a major marketing advantage, but they also will be able to maximize the efficiency of their service bays.

Please be clear, that we are not attempting to stop the use of this technology or any technology that improves the car owner's experience, safety or reduces harmful emissions. However, once a car owner spends his or her hard earned money to purchase a car, they should have the right to decide where it is serviced and where any information that is transmitted from the car regarding vehicle diagnosis or repair is sent, whether its the dealer or the shop near their home or business where they prefer to go.

It is with this in mind that AAIA, CARE and a number of consumer groups have strongly supported passage of the Motor Vehicle Owners Right to Repair Act (HR 2694). Introduced by Rep. Edolphus Towns (D-NY) on June 13th, 2007, right to repair ensures that all information and tools provided to the new car dealer by the car company is also made available to the independent aftermarket. The information would not be available for free, but would be provided by the car company at a fair and reasonable price. This bill would not prohibit new technology, but rather, similar to what Rep. Waxman and then-Senator Gore were attempting achieve in the Clean Air Act, ensure that use of advanced technologies on vehicles would not be used to the detriment of competition in the aftermarket and in the end the car owner as well.

Car companies have strongly opposed passage of right to repair based on two contention: one, that all of the information is already available and that "this is a solution in search of a problem"; and two, that this is a veiled approach by the independent aftermarket to obtain the trade secrets of the car companies.

AAIA does not dispute the fact that car companies have done a better job in making information and tools available to our industry. However, much of this progress has not come due to their willingness to ensure competition for their customers, but instead EPA's service information regulations and the political pressure that has been brought on them by consideration of right to repair legislation.

Should Congress ultimately decide not to enact right to repair legislation, we have little doubt that the car companies will be under extensive commercial pressure to cut the aftermarket out of any access to information. Car companies and their dealer franchises are now making significantly more money through the sale of parts and service than they are through the sale of new vehicles. According to the National Automobile Dealers Association (NADA), even though dealership parts and service department sales comprise just 11.8 percent of typical dealer's total sales, it contributes 48 percent of the total operating profit. New car sales make up 60 percent of total sales, but only contribute 35 percent of total profit. Absent legislation, the need by the car companies and their dealers to maximize profits from parts and service will override, in the long run, any current cooperation we have been receiving.

Car companies have pointed to the establishment of the National Automotive Service Task Force (NASTF) which they claim is aimed at resolving any issues related to the availability of service information or tools to our industry. However, this is a voluntary organization and it is important to remember that there is no legal requirement that the car companies must comply with any determinations made by NASTF. In fact, all NASTF does is take information requests from our industry and funnel them to the appropriate car company. Once the request is with the manufacturer, it is totally at the discretion of the car company as to whether to make that information available to the independents. Further, the time necessary for the car companies to respond to the information request of an independent varies considerably, often taking weeks and months. If a shop has a car in its service bays, they normally do not have the luxury of waiting that long to resolve a complaint. Therefore, currently NASTF is not used extensively by the industry and is not, in our opinion, the answer to the right to repair issue.

Considering the commercial interests at stake and the need to preserve competition, Congress must consider right to repair legislation that would legally bind car companies to make all information and tools available to independents. Any other voluntary agreement with no legal ramification will put the small independent shop at the mercy of the large vehicle manufacturers and their powerful new car dealer franchises.

As to their allegations that the industry is looking for access to their trade secrets, one only needs to look at the composition of the vehicle aftermarket to understand why this is not true. Many of the companies that produce parts in the vehicle aftermarket are the same companies that supply the car companies with their original equipment parts. In other words, the part that is in the aftermarket box may be the same as the part that is in the original equipment box, just the label is different and the cost can be up to 50 percent less. In fact, the independent aftermarket often has the ability to improve on the part sold by the car companies based on the in-use experience of that part on the vehicle.

Further, and maybe most importantly, the bill provides significant protections for the car companies trade secrets, only requiring them to make available to the aftermarket the same information that they make available to their dealer network. This language is similar to provisions protecting car company trade secrets in the service information requirements in the Clean Air Act. It is important to note that since their promulgation in the late nineties, there has never been an intellectual property dispute regarding EPA's requirements for emissions related information or tools. We do not see this situation changing with the implementation of right to repair legislation.

Madam Chairwoman and members of the Committee, America's car owners are already being hit with much higher energy costs which are making it more and more difficult to use their vehicle for even the most basic necessities, such as going to work and shopping for the families. Should a competitive repair market disappear, car owners will find the cost of car ownership shooting up even further, with little benefit to the economy, the air, or our dependence on foreign oil. While it is unlikely that this current Congress will take action on HR 2694, AIA and CARE stands ready to work with this committee to

further increase awareness in Congress as to the impact these issues will have on the Nation's small businesses and ultimately on the consumer.

Thank you again for the opportunity to submit testimony and we are open to respond to any questions that the committee might have regarding this issue.